

MAR 21 2013

Clerk, U.S. District Court  
District Of Montana  
Helena

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

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UNITED STATES OF AMERICA,

Cause No. CR 08-63-GF-SEH  
CV 13-27-GF-SEH

Plaintiff/Respondent,

vs.

ORDER DISMISSING § 2255 MOTION  
AND DENYING CERTIFICATE  
OF APPEALABILITY

ALBERTO QUIROZ-MENDEZ,

Defendant/Movant.

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On March 20, 2013, Defendant/Movant Alberto Quiroz-Mendez (“Quiroz”), a federal prisoner proceeding pro se, moved to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. It is his second under § 2255. *See* Mot. § 2255 (doc. 169); Order (doc. 172); Order at 1, No. 10-35899 (9th Cir. Nov. 23, 2011).

The second § 2255 motion was not preauthorized by the Court of Appeals, 28 U.S.C. §§ 2255(h), 2244(b). Consequently, this Court lacks jurisdiction to consider it, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Dismissal is imperative. A certificate of appealability is not warranted. *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The

Court of Appeals has already decided the issue presented by the motion, *see Buenrostro v. United States*, 697 F.3d 1137, 1140 (9th Cir. 2012). Transfer to that court is not in the interest of justice, 28 U.S.C. §§ 1631, 2255(f).

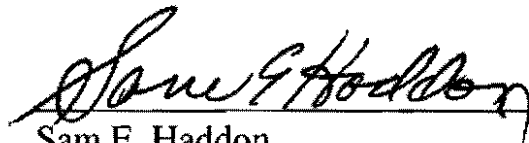
**ORDERED:**

1. Quiroz-Mendez's second motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (doc. 177) is DISMISSED for lack of jurisdiction.

2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Quiroz files a Notice of Appeal;

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 13-27-GF-SEH are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 21<sup>st</sup> day of March, 2013.

  
Sam E. Haddon  
United States District Court